

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6997 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SOLANKI PRAVINCHANDRA PITAMBARBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AR LAKHIA for Petitioner
MR SK PATEL for Respondent No. 1
None present for Respondent No.2, 3, 4
None present for Respondent No.5, 6, 7

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/09/1999

ORAL JUDGEMENT

#. In the first sitting, Mr.R.V.Sampat, appeared for respondents No.5, 6, & 7 but at that time R & P which was called for of two suits being Regular Civil Suits No.777/90 and 778/90 were not available and the matter was ordered to be taken up at 2:45 p.m. At 2:45 p.m.,

Mr.Sampat is not present for respondents No.5, 6, 7 and for respondent No.2, though on the board names of Mr.P.M.Raval and Mr.N.D.Nanavati have been shown as their counsel, none of them is also present. Heard the learned counsel for the petitioner.

#. The services of the petitioner were terminated on the ground that the appointment which has been given to him on the basis of appointment order has not been issued by the office of respondent No.2. Under the order impugned in this special civil application, the services of four teachers were terminated. Out of these four teachers, two were given appointment on the same date, i.e. 13.7.90, though under different orders, and two others were given appointment under the same order on 4.8.90. This order of termination from services has been challenged by all the four teachers. Three have gone to the civil court and one, the petitioner herein, has come up before this Court by this writ petition under Article 226 of the Constitution of India.

#. Looking to the seriousness of the matter, this Court has considered it to be appropriate to implead those three teachers as party to this special civil application and accordingly they have been impleaded as respondents No.5, 6 and 7. On their behalf, reply to the special civil application has been filed by Mr.R.V.Sampat, Advocate, though it is a different matter that the advocate is not present in the Court.

#. Regular Civil Suit No.777 of 1990 came to be filed by Koradia Pravinkumar Jivaraj in the Court of Civil Judge (S.D.), Junagadh, and challenge has been made therein to the order dated 4.9.90 of respondent No.2 under which his services have been brought to an end. In this suit, a compromise purshis has been passed by the plaintiff and respondent No.2, namely District Primary Education Officer, Junagadh. The matter has been compromised between the parties, meaning thereby, the District Primary Education Officer, Junagadh, has accepted as a fact that the ground given of the termination of services of the plaintiff therein that he forged the appointment order is not correct. I find from the record of Regular Civil Suit No.777 of 1990, the order of District Primary Education Officer, Junagadh, dated 10th September, 1999, under which the orders of termination of services of two teachers named therein, i.e. (i) Parsania Kantaben Panchan and (ii) Koradia Pravinkumar Jivaraj have been cancelled and they have been taken back in services. Two teachers, namely Parsania Kantaben Panchan and Dineshkumar Khatubhai, filed Regular Civil Suit No.778 of

1990 in the Court of Civil Judge (S.D.), Junagadh. It is really shocking that when the ground of termination of services of all the four teachers were common in these suits, the matter has been compromised by respondent No.2 with plaintiff No.1 in the aforesaid suit. So far as plaintiff No.2 is concerned, the matter has not been compromised. The suit proceeded and ultimately the same was decreed by the learned trial Court on 12th August, 1996. It is true that the suit has been decreed on technical ground of violation of principles of natural justice while affecting termination of services of that plaintiff, but the fact remains that the suit has been decreed and the Court has given liberty to the respondent No.2, in case it is a case of forged order of appointment, to hold inquiry in accordance with law.

#. Nobody is present on behalf of respondents Nos.2 to 7 to controvert the facts stated by learned counsel for the petitioner during the course of arguments. He stated that the judgment and decree of the learned trial Court dated 12th August, 1996, has not been challenged by respondent No.2 - District Primary Education Officer, Junagadh. Not only this, even the officer concerned has not considered it to be a fit case to hold inquiry in the matter. The learned counsel for the petitioner further contended that the petitioner was given appointment after inviting applications for open selection and undergoing process of selection and in pursuance of this appointment order he joined services in the school concerned on 20th July 1990. As per the directions of the appointing authority on 30th August 1990, he executed a bond to serve the school for three years. Not only this, under the order of respondent No.2, he has undergone his medical examination and he was found to be medically fit for the job. The order of termination of services of the petitioner is stigmatic and secondly it is a termination on the ground that it is a forged document which could have been done only after giving a notice and opportunity of hearing to the petitioner. It is not a simpliciter discharge or innocuous order of termination, but as what it is contended, it caused stigma on the petitioner. It is not an ordinary stigma, but it is very very serious where he has been labelled as a candidate who has forged appointment order.

#. In the reply to the special civil application filed by respondent No.2, he has reiterated that it is a case where the petitioner has forged the appointment order. However, in support of this fact and plea, nothing has been produced on the record of this special civil application. A question does arise for consideration of

this Court as to whether on such a bald and vague statement made by Deputy Primary Education Officer, Junagadh, whether the appointment order of the petitioner can be taken to be a forged document, and in the facts which have come on the record, the reply is in negative. If we go by the order of termination of services of the petitioner and three others, it proceeds on common ground. In case the appointments of two persons were not taken to be on the basis of forged appointment order and in the third case, the suit has been decreed, how far it is justified on the part of respondent No.2 to come up with such a plea before this Court, more so, concealing of the facts before this Court of compromising the matter in the civil court by it in two cases and decree of the civil court in the third case. It appears to be a case where the petitioner and other persons could not stand to the demands of the officers and as a result thereof, these two poor persons had to continue with the litigation. In case they would have accepted the demands and desires of the officers concerned, I am satisfied that in their cases also, the result would have been compromise purshis as it has been done in the case of two other teachers. Corruption is rampant in the country and this case, if we go by its facts, certainly exhibits an example of how our officers are corrupt. In case it would have been really a case of forged document, then certainly appropriate action would have been taken in accordance with principles of natural justice against the four teachers. Even if it is not done, the suit filed by three person and this writ petition by one person should have been contested on merits rather than to feel contended and satisfied by filing compromise purshis in case of two teachers and to allow the suit of third person decreed on merits though on technical ground. At the cost of repetition, I am constrained to observe that even this special civil application has not been contested by respondent No.2 on merits. The facts stated by petitioner in the special civil application have not been specifically denied but only a vague plea has been taken that it is a forged document. On the basis of such reply and plea, the petitioner cannot be non-suited in the special civil application. Moreover, as it is a stigmatic termination order, principles of natural justice have to be followed before passing the same. This is another ground on which this writ petition deserves to be allowed.

#. In the result, this special civil application succeeds and the same is allowed and the order dated 4.9.90 to the extent it relates to termination of services of the petitioner is quashed and set aside and

the respondents are directed to reinstate the petitioner back in service with full backwages. The petitioner shall be entitled for interest on backwages at the rate of 12% p.a. It is a case where a low paid teacher has unnecessarily been dragged into litigation by none other than the officer of the welfare State. Rule is made absolute in aforesaid terms. The respondent No.2 is directed to pay Rs.2,000/= by way of costs.

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